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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

PUBLIC COPY

[redacted]

APR 25 2003

File: SRC-01-038-51274 Office: Texas Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition remanded for further consideration.

The petitioner engages in the business of athletic footwear. It seeks to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that a qualifying relationship exists between the foreign entity, [redacted] and the U.S. company [redacted]

On appeal, counsel submits a brief in rebuttal of the director's findings.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

The United States entity, [redacted] d/b/a [redacted] was established in 2000 and states that it is a wholly owned subsidiary of [redacted] located in Kingston, Jamaica West Indies. The petitioner seeks to employ the beneficiary for a three-year period at an annual salary of $48,000.

At issue in this proceeding is whether there is a qualifying relationship between the U.S. and foreign entities.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

> *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(I) state:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(J) state:

Branch means an operating division or office of the same organization housed in a different location.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(K) state:

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns directly or indirectly, less than half of the entity, but in fact controls the entity.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L) state, in pertinent part:

Affiliate means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

In response to the Service's request for additional information, the petitioner submitted a copy of the "Articles of Incorporation" of [redacted] and a copy of a stock certificate number #1 indicating that [redacted] owned 1,000 shares of capital stock in [redacted]

Additionally, the petitioner submitted a letter from counsel dated November 13, 2000, in which counsel stated, in pertinent part, that:

[redacted] is a franchise of [redacted] a Florida corporation, was established in Weston, Florida on August 31, 2000. Located in Jamaica, [redacted] (hereinafter referred to as

[redacted] owns 100% of the equity interest in Tafjam USA and therefore has the requisite controlling interest.

The parent company, [redacted], is doing business within the meaning of 8 C.F.R. § 214.2(L)(3)(H). Established in 1996, [redacted] is a franchise of [redacted] Franchising is a method of operating a business which allows an individual the opportunity to be her own boss by using systems and procedures tested and developed by the "Franchisor," rather than risking time and monies operating independently. [redacted] is a complete franchise business that has been recognized as the world's leader in athletic footwear franchising, while continuing its commitment to the core business of selling high quality footwear through its cooperative store operations.

The director, in denying the petition, stated in pertinent part, that:

The petitioner was requested to submit evidence to show that the United States entity is not considered a franchise of [redacted] On March 19, 2001, a response was received which states that "[redacted] owns the right (franchise) to do business as [redacted]" This Service disagrees with the petitioner. The operating agreement for a franchise lists the specific ways in which the owner retains control. In this instance, according to the operating agreement attached to the petition, [redacted] owns and uses the trademark and service mark of [redacted] Therefore, it is clear to this Service that [redacted] does not meet the definition of any of the qualifying organizations defined above as it does not own and control [redacted] Inc. d/b/a [redacted].

On appeal, counsel states, in pertinent part, that:

The Service's decision was based on a conclusion that the petitioner did not establish both ownership and control of the U.S. company. Petitioner challenges the Service's decision and contends that the Service's interpretation violates Congress' intent in enacting 8 U.S.C. Section 1101(a)(15)(L). Petitioner contends that the Service's theory that the foreign company does not own the U.S. company since the U.S. company is doing business as a franchise is both arbitrary and capricious. The petitioner has documented 100% stock ownership of the U. S. company. The fact that the U.S. company owns and operates a franchise does not change this legal relationship.

> The fact that the company enters into a contractual relationship cannot in and of itself divest the foreign company of its control. To construe the statute differently mistakes the spirit of and intent of the law.

Regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this nonimmigrant visa petition. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church of Scientology International*, 19 I&N Dec. 593 (BIA 1988)(in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. Id.

The record as presently constituted does not corroborate the director's findings in this case. The record demonstrates that the foreign entity owns 100 percent of the U.S. entity and therefore, establishes a qualifying subsidiary relationship between the two entities. The record further indicates that the foreign entity is a franchise operation of Athlete's Foot Marketing Associates, Inc. (AFMAI) and that the beneficiary will be employed in the U.S. as a representative of the foreign organization, operating another franchise operation contracted with AFMAI. Thus, the petitioner has satisfied the qualifying relationship requirements found at 8 C.F.R. § 214.2(l)(1)(ii). Based on the aforementioned, it must be concluded that the United States and a foreign entity do have a qualifying relationship. The petitioner has overcome the decision. of the director.

However, the petition may not be approved, as the record contains insufficient evidence to demonstrate that the beneficiary has been and will be employed in a primarily managerial or executive capacity. This case will be remanded for the director to determine whether the petitioner has met the eligibility requirements under section 101(a)(15)(L) of the Act to classify the beneficiary as an L-1 intracompany transferee.

The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision dated May 5, 2001 is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision.